IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8286 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ANIL LAXMANRAO KUTE

Versus

STATE OF GUJARAT

Appearance:

MS KRISHNA U MISHRA for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 28/03/2000

ORAL JUDGEMENT

#. Commissioner of Police, Baroda City, Baroda passed an order on August 20, 1999, in exercise of powers under section 3 (2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the detenue under the provisions of the PASA Act.

#. The detaining authority took into consideration three prohibition offences registered against the detenue. Statements of three witnesses were considered, whose identity is not disclosed in exercise of powers under section 9 (2) of the PASA Act. The authority after considering the less drastic remedy, came to a conclusion that the detention under the PASA Act is the only remedy that could be resorted to for immediately preventing the petitioner from pursuing his bootlegging activities.

#. Ms. Bhatt, learned advocate appearing for Ms. K.U. Mishra, for the petitioner places on record a communication received from Commissioner of Police, Baroda dated __.2.2000. (The date is not written in the communication). Many contentions are raised in the petition. However, Ms. Bhatt submitted that the detaining authority did not supply the relevant documents at the time of detention and supplied those documents only in the month of February, 2000. This delay in supply of necessary documents has resulted into denial of right of making an effective representation enshrined under Article 22 (5) of the Constitution of India and therefore, the petition may be allowed and the order be quashed.

#. Mr. K.T. Dave, learned AGP has opposed this petition. He has relied upon the affidavit-in-reply filed by the detaining authority. He was, however, at loss to point out any explanation in the affidavit on the aspect of non-supply of relevant documents, the ground pressed into service by the petitioner.

#. It appears that the detenue was supplied the documents in relation to the offences registered against him. Although index of these documents indicate that the statements of witnesses were supplied, in fact, they appear to have been not supplied for the reason that these documents are page numbered and that the statements do not find place in the compilation if sequentially papers are seen. Further, the detaining authority has supplied these documents suo motu in the month of February, 2000 because there was only one representation made in October, 1999 wherein the detenue does not appear to have made any demand for these statements.

#. Be that as it may, the fact remains that the detaining authority failed in its duty of supplying to the detenue all relevant documents relied upon by it while passing the order of detention and ultimately, after lapse of about six months, the documents came to be

supplied in the month of February, 2000. This can certainly be said to have infringed the right of the detenue of making an effective representation due to failure on the part of the detaining authority of supplying the documents. This would have an adverse effect on the order of detention and the order cannot be supported. The petition therefore, deserves tobe allowed.

#. In view of the above discussion, the petition is allowed. The impugned order of detention dated 20th August, 1999 is hereby quashed and set aside. The detenue - Anil Laxmanrao Kute is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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